UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

v. 15 Cr. 410 (LAK/FM)

MICHAEL ADAMS,

Defendant.

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New York, N.Y.
April 28, 2016
10:45 a.m.

Before:

HON. FRANK MAAS,

Magistrate Judge

APPEARANCES

PREET BHARARA
United States Attorney for the
Southern District of New York
JARED LENOW
MAX C. NICHOLAS
Assistant United States Attorney

FREEMAN NOOTER & GINSBERG
Attorneys for Defendant
LOUIS M. FREEMAN

THE DEPUTY CLERK: United States of America versus Michael Adams.

Counsel, please state your name for the record.

MR. LENOW: Good morning, your Honor. Jerod Lenow and Max Nicholas for the government.

THE COURT: Good morning.

MR. FREEMAN: Good morning. Louis Freeman for Michael Adams.

THE COURT: Good morning. Have a seat.

Do I understand correctly that your client wishes to plead guilty to the four-count indictment in this case?

MR. FREEMAN: Yes, sir.

THE COURT: Do you understand, Mr. Adams, that you have the right to have all proceedings in this case, including your guilty plea, if you choose to plead guilty, or a trial, if you wish to go to trial, occur before the district judge assigned to the case, who is Judge Kaplan?

THE DEFENDANT: Yes, sir.

THE COURT: You nevertheless wish to plead guilty before me today?

THE DEFENDANT: Yes, sir.

THE COURT: I have before me a Written Consent to Proceed Before a United States Magistrate Judge on a Felony Plea Allocution. Did both you and Mr. Freeman sign this form earlier today?

THE DEFENDANT: Yes, sir.

THE COURT: Before you signed it, did you discuss it with counsel?

THE DEFENDANT: Yes, sir.

THE COURT: For the record, I have signed the form, as well.

Now, to take your guilty plea today, sir, I need to ask you a series of questions under oath, so let me ask you to stand for a moment and raise your right hand, please.

(Defendant sworn)

THE COURT: Do you understand that now that I've placed you under oath, if you knowingly make a false statement to me about an important fact, that could be used against you in the future in a prosecution for perjury or making false statements?

THE DEFENDANT: Yes, sir.

THE COURT: Could you tell me your full name, sir?

THE DEFENDANT: Michael Adams.

THE COURT: How old are you, Mr. Adams?

THE DEFENDANT: 30 years old.

THE COURT: How far did you go in school?

THE DEFENDANT: GED.

THE COURT: Are you a United States citizen?

THE DEFENDANT: Yes, sir.

THE COURT: Are you currently or have you recently been under the care of a doctor or a psychiatrist for any reason?

THE DEFENDANT: No, sir.

THE COURT: Are you taking any medications at present?

THE DEFENDANT: No, sir.

THE COURT: Have you ever been treated either for alcoholism or for drug addiction?

THE DEFENDANT: No, sir.

THE COURT: As you sit before me, do you feel okay?

THE DEFENDANT: Yes, sir.

THE COURT: Do you have any trouble understanding the questions I've been asking you thus far?

THE DEFENDANT: No, sir.

THE COURT: Have you received a copy of the superceding indictment in this case and had a chance to read it?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand what it alleges that you did?

THE DEFENDANT: Yes, sir.

THE COURT: If you wish, I could take the time to read the entire indictment to you allowed. Is that necessary?

THE DEFENDANT: No, sir.

THE COURT: Have you had sufficient time to talk with Mr. Freeman about the charges in this indictment and about how you wish to plead with respect to them?

THE DEFENDANT: Yes, sir.

THE COURT: Are you satisfied with the representation and the advice that counsel has furnished to you?

THE DEFENDANT: Yes, sir.

THE COURT: At this time, are you ready to enter your plea to the four counts?

THE DEFENDANT: Yes, sir.

THE COURT: What is your plea; guilty or not guilty?

THE DEFENDANT: Guilty.

THE COURT: Even though you've told me, Mr. Adams, that you're guilty, part of my job is to make sure that you are entering a plea of guilty voluntarily and that you fully understand the charges against you and the consequences of pleading guilty to those charges. I'm going to pursue those subjects with you in some detail.

Do you understand, sir, that in Count 1, you're charged with having conspired, together with others, to commit a Hobbs Act robbery in June of 2015?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand that that's a violation of Title 18 United States Code, Section 1951?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand that in Count 2, you're charged with having actually committed a robbery on June 18th, 2015 in violation of the same statute?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand that those two crimes carry with them a maximum jail term of 20 years?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand that on both of these counts you face a maximum supervised release term of three years?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand that in Counts 3 and 4, you're charged with having discharged a firearm in connection with the Hobbs Act robbery conspiracy and robbery charged in the first two counts in violation of Title 18 United States Code, Section 924(c), or having aided and abetted somebody else in the commission of that crime in violation of Title 18 United States Code, Section 2?

THE DEFENDANT: Yes, sir.

MR. FREEMAN: Your Honor, just so you know, that as applies to Mr. Adams, it's the aiding and abetting. That's the theory against him. He did not possess the weapon during the robbery.

THE COURT: You understand, though, that that's the charge, sir?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand that each of those two counts carries a mandatory minimum term of imprisonment of 10 years and a maximum jail term of life?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand that on those two counts you face a maximum supervised release term of five years?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand that on all four counts you face a fine of the greatest of either $250,000, or twice the amount of money that you and others obtained through this crime, or twice the amount of financial loss that was caused to persons other than yourself as a result of the crime?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand that on each of these four counts you also face a $100 mandatory special assessment?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand that if you plead guilty to all four counts you face a maximum sentence of life in jail and a mandatory minimum of 10 years in jail?

THE DEFENDANT: Yes, sir.

THE COURT: I mentioned supervised release. Do you understand that if you are placed on supervised release and thereafter violate any condition of that supervised release, Judge Kaplan will be able to revoke the term of supervised release that he previously imposed and then could return you to prison without giving you any credit for time that you previously had served on post release supervision?

THE DEFENDANT: Yes, sir.

THE COURT: Would the government set forth for the record the elements of these four crimes?

MR. LENOW: Yes, your Honor.

For Count 1, which is the robbery conspiracy count, 18 U.S.C. 1951, there are three elements:

First, the existence of the robbery charged in the indictment in Count 1; second, the defendant knowingly became a member of the robbery conspiracy; and third, that interstate or international commerce, or any item moving in interstate or international commerce, was or would have been delayed, obstructed, or affected in any way or degree if the object or robbery conspiracy had been completed.

The second count, as your Honor mentioned it, the substantive robbery count, aiding and abetting a robbery in violation of 18 U.S.C. 1951, there are four elements to this offense:

First, the defendant obtained or took the personal property of another, or for the presence of another, or attempted to do so; second, the defendant did so against the intended victim's will by actual or threatened force, violence, or fear of injury, whether immediate or in the future; third, the defendant's actions in any way or degree obstructed, delayed, or affected interstate commerce; and fourth, the defendant acted unlawfully and knowingly.

The third count of the indictment, as your Honor mentioned, is the 18 U.S.C. 924(c)(1)(A)(3), discharge count, and this count has three elements:

First, that on or about the date alleged in the indictment, defendant used or carried or possessed a firearm, or any combination of those acts, or aided and abetted in the use, carrying, or possession of a firearm by another; second, that the defendant used or carried the firearm or aided and abetted the use in the carrying of the firearm during and in relation to the specified crime of violence, or that the defendant possessed a firearm or aided and abetted the possession of a firearm in furtherance of those same crimes, and the firearm was discharged. Here, the specified crimes of violence, or crime of violence, are the robbery conspiracy charged in Count 1, and the substantive robbery charged in Count 2. The third element of that offense, the 924(c) offense, is that the defendant acted knowingly.

The fourth count, as your Honor mentioned, is the 18 U.S.C. 924(j), murder count. This offense has all the same elements as the 924(c) offense, with the exception that the gun need not necessarily have been discharged, but additionally, this Count 4 offense also has an element that the defendant caused the death of a person through the possession, use, or carrying of the firearm, which killing is murder as defined under 18 U.S.C. 1111.

I'd also note that Counts 2, 3, and 4 all include aiding and abetting charges which, under the federal law, under which the defendant is guilty if he aided and abetted any of these offenses as if he committed them as a principal.

Finally, the government would have to prove by a preponderance of the evidence that some act in furtherance of the conspiracy in Count 1, or some act actually occurred for Counts 2, 3, and 4, happened in the Southern District of New York.

THE COURT: Thank you, Mr. Lenow.

When I described the charges to you, I'm not sure I sufficiently distinguished between Count 3, which deals with the discharge of a weapon during a robbery, and Count 4, which deals with a murder. But do you understand the distinction between those two counts, sir?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand the elements of these four crimes as Mr. Lenow has outlined them?

THE DEFENDANT: Yes, sir.

THE COURT: Have you discussed the elements of these crimes to which you are pleading guilty with Mr. Freeman?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand that you have the right to plead not guilty and to have a jury trial regarding these charges?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand that if you do plead not guilty and go to trial, the burden would be on the government to establish each required element to these crimes beyond a reasonable doubt before you could be found guilty?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand that at a trial, you would be presumed innocent unless and until the government established your guilt beyond a reasonable doubt?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand that at a trial, and at every other stage of your case, you would have the right to be represented by counsel and, if need be, an attorney would be appointed for you?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand that at a trial, you would have the right to confront and question any witnesses who testified against you, and would also have the right not to be forced to incriminate yourself, which means you would not have to be a witness against yourself?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand that at a trial, you would be entitled to testify and present evidence, and could also compel the attendance of witnesses to testify for you?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand, sir, that if you plead guilty, there will be no trial of any kind so that you're giving up your right to a trial, and the only step remaining will be for Judge Kaplan to sentence you?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand the nature of the four charges to which you are pleading guilty and the range of penalties, including the maximum sentence to which you potentially are subjecting yourself through your plea?

THE DEFENDANT: Yes, sir.

THE COURT: Have you and Mr. Freeman talked about how the Sentencing Commission Guidelines may apply to your case?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand that Judge Kaplan is not bound by those guidelines, but nevertheless must consult the guidelines and take them and other factors under a statute known as Title 18 United States Code, Section 3553(a) into account when deciding what sentence to impose?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand that Judge Kaplan will not be able to determine the guidelines that apply to your case until after a presentence report has been prepared and both you and the government have had a chance to challenge the facts that the probation officer reports?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand that even after it's been determined what guideline applies to a case, the sentencing judge has the authority in certain circumstances to impose a sentence that is either more severe or less severe than the one called for by the guidelines?

THE DEFENDANT: Yes, sir.

THE COURT: Mr. Lenow and Mr. Nicholas sent your attorney, Mr. Freeman, a letter bearing yesterday's date which describes the four crimes and sets forth the United States Attorney's Office's understanding of how the guidelines should apply to your case. Are you familiar with that letter?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand that in this letter, the government concludes that your guideline sentencing range is 360 months in jail to life in jail with a mandatory minimum term of 10 years in jail?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand that the government's calculation is in no way binding upon either the probation office or Judge Kaplan, and that they both will make their own determination as to what the guidelines for your case should be?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand that under certain circumstances, either you or the government may have the right to appeal from any sentence that is imposed?

THE DEFENDANT: Yes, sir.

THE COURT: Do you understand that parole has been abolished, so that if you were sentenced to prison, you will not be released early on parole?

THE DEFENDANT: Yes, sir.

THE COURT: Understanding everything I've just told you, Mr. Adams, do you still wish to plead guilty?

THE DEFENDANT: Yes, sir.

THE COURT: Have any promises of any kind been made to you to influence you to plead guilty?

THE DEFENDANT: No, sir.

THE COURT: Has anybody made a promise to you concerning the actual sentence you will receive?

THE DEFENDANT: No, sir.

THE COURT: Has anybody threatened you, sir, in order to influence you to plead guilty?

THE DEFENDANT: No, sir.

THE COURT: Are you entering your plea of guilty voluntarily and of your own free will?

THE DEFENDANT: Yes, sir.

THE COURT: Did you, in fact, commit the crimes charged?

THE DEFENDANT: Yes, sir.

THE COURT: All four charges appear to be related, so let me just ask you to tell me what it is you did that makes you guilty of these four crimes.

THE DEFENDANT: On June 18, 2015, I participated in a robbery of a T-shirt shop on Amsterdam Avenue in Manhattan with others. During that robbery, a gun was fired by one of the participants, which I later learned resulted in the death of a person being robbed.

THE COURT: I assume you understood that participating in this robbery was against the law?

THE DEFENDANT: Yes, sir.

THE COURT: When you went into the shop, it was with the intention of committing the robbery, correct?

THE DEFENDANT: Yes, sir.

THE COURT: Are there further questions you believe need be asked, Mr. Lenow?

MR. LENOW: Yes, your Honor. If you could ask the defendant whether, prior to entering the shop where the robbery occurred, if he knew a gun was going to be used by one of the other individuals with whom he had agreed to commit that robbery?

THE COURT: Is that correct, sir?

THE DEFENDANT: Yes, sir.

THE COURT: Anything else?

MR. LENOW: Your Honor, we would additionally proffer that the store that was robbed purchased goods that had traveled in interstate commerce, including goods that were purchased from a supplier in New Jersey and were brought to New York, to Manhattan rather, and sold in Manhattan.

THE COURT: I take it, Mr. Freeman, there's no dispute as to the interstate commerce element?

MR. FREEMAN: Correct.

THE COURT: Mr. Freeman, are you aware of any reason that Mr. Adams should not plead guilty?

MR. FREEMAN: No.

THE COURT: Nor is the government, Mr. Lenow; is that correct?

MR. LENOW: One moment, your Honor.

(Discussion off the record)

MR. LENOW: Your Honor, that's sufficient from the government's perspective. Thank you.

THE COURT: My question was, are you aware of any reason that the defendant should not plead guilty?

MR. LENOW: My apologies, your Honor. I am not aware of any reason, your Honor.

THE COURT: Having heard from Mr. Adams, I'm satisfied that he understands the nature of the four charges against him and the consequences of pleading guilty to those charges. I'm also satisfied that he's entering his plea voluntarily and knowingly, and that there is a factual basis for the plea.

For those reasons, Mr. Adams, I will recommend to Judge Kaplan that your plea of guilty be accepted.

Has Judge Kaplan set a sentencing date?

MR. LENOW: He has not, your Honor.

THE COURT: I will set August 26th as a control date for sentencing.

I will direct that a presentence report be prepared, that you, Mr. Freeman, make your client available for an interview by the probation department within two weeks, and that the government furnish its prosecution case summary to the probation department within that same time interval. Last, that Mr. Adams remain detained pending sentencing.

Anything further concerning Mr. Adams today?

MR. LENOW: No. Thank you, your Honor.

MR. FREEMAN: Not to my knowledge.

THE COURT: Thank you.

(Adjourned)